

Appeal from a decision issued by the Grand Junction, Colorado, District Manager, Bureau of Land Management, terminating public access to a bridge right-of-way. C 9112 (7-161).

Appeal dismissed.

1. Federal Land Policy and Management Act of 1976: Rights-of-Way -- Rules of Practice: Appeals: Standing to Appeal -- Rules of Practice: Protests:

One who has not participated in the decisionmaking process prior to a BLM decision concerning action affecting closure of a public right-of-way is not a "party to a case" within the meaning of 43 CFR 4.410(a). Such a person lacks standing to appeal, even though he may be adversely affected by a decision. To have standing to appeal, one must be both a party to a case and adversely affected by a decision.

APPEARANCES: Edwin Marston, Paonia, Colorado, pro se; Lowell L. Madsen, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE ARNESS

Edwin H. Marston has appealed from an August 5, 1986, decision by the Grand Junction District Manager, Bureau of Land Management (BLM), which closed the Bridgeport Bridge to public access. The District Manager's decision concerning public use of the bridge was reached following public coordination and consultation which included a 30-day public review and comment period. While numerous private citizens, public officials, and private organizations participated in the review proceedings which led up to the August 5, 1986, decision, Marston was not one of those participants, although he has used both the bridge, which is the subject of the right-of-way grant at issue in this matter, and the wilderness study area (WSA) to which the bridge gives access.

On January 31, 1986, BLM published notice in the Grand Junction, Colorado, Daily Sentinel that it was closing the Bridgeport Bridge to public

pedestrian traffic because the bridge was unsafe for public use. Bridgeport Bridge is located in sec. 18, T. 14 S., R. 98 W., sixth principal meridian, spanning the Gunnison river in Mesa County, Colorado. It provides access to the Musser Ranches, as well as to the lower end of Big Dominguez Canyon, a part of the Dominguez Canyon WSA. Musser Ranches is the holder of a right-of-way granted October 24, 1983, which allowed Musser Ranches to maintain the Bridgeport Bridge on public land. As a condition of the grant, Musser Ranches agreed to allow public foot traffic across the bridge and its approaches.

Following the grant to Musser Ranches of the right-of-way for the Bridgeport Bridge in 1983, structural analysis of the bridge by BLM engineers revealed the bridge had become unsafe, and an emergency closure to public use was ordered in January 1986 as a result. After the emergency closing of the bridge, BLM prepared a Draft Interim Management Plan (IMP) and Environmental Assessment (EA) for the Dominguez Canyon WSA which included a proposed decision concerning the Bridgeport Bridge. This proposal for public access to the WSA in the Bridgeport vicinity declared "[t]he Preferred Alternative for providing access is to construct a new foot-horse bridge at Bridgeport, subject to BLM funding, and to not allow the public to use the existing bridge." A comment period from May 8 until June 7, 1986, was set to allow public participation in the decisionmaking process.

Numerous written comments were received by BLM concerning the draft IMP during the comment period, and a public meeting was held on May 29, 1986, specifically to air concerns about the bridge closure issue. It was attended by 31 persons. A record of all the comments made, both at the meeting and by letter, is included in the BLM case file now before the Board. Marston did not attend the May 29 meeting nor did he comment in writing to BLM concerning the proposed bridge closure. His first participation in the matter came on August 12, 1986, when he filed written notice of appeal from BLM's decision to close the bridge which had been reached on August 5, 1986. This decision was made as a part of a Finding of No Significant Impact and a final EA and IMP for the Dominguez WSA. It is this appeal which is now before us for review.

[1] Departmental regulation 43 CFR 4.450-2 provides that any objection to any action proposed to be taken is a protest; an appeal, however, may be taken only from a decision by BLM. Kenneth W. Bosley, 102 IBLA 235, 236 (1988); Howard H. Vinson, 90 IBLA 280, 282 (1986). In this case, BLM publicly announced the proposal to permanently close the bridge to pedestrians on May 8, 1986. At any time prior to the decision to close the bridge reached on August 5, 1986, Marston could have protested the proposed action. Instead he waited for the action taken on August 5, 1986, to file an appeal. Marston clearly filed an appeal of a decision by BLM, and did not protest a contemplated action.

The regulations at 43 CFR 4.410(a) provide that "[a]ny party to a case who is adversely affected by a decision of an officer of Bureau of Land Management \* \* \* shall have a right to appeal to the Board \* \* \*. In num-

be both a party to the BLM decision and have a legally cognizable interest that has been adversely affected by that decision in order to prosecute an appeal. E.g., Mark S. Altman, 93 IBLA 265, 266 (1986); Sharon Long, 83 IBLA 304, 307 (1984); In re Pacific Molybdenum Co., 68 IBLA 325, 331 (1982). We stated in Altman, supra at 266, "[i]f either element is lacking, an appeal must be dismissed \* \* \*."

Marston alleges in his statement of reasons filed in support of his appeal that he and his family use the bridge for access to the Dominguez Canyon WSA. He, therefore, arguably has a legally cognizable interest that has been adversely affected. However, as counsel for BLM points out, Marston is not a "party to a case" within the meaning of 43 CFR 4.410. As we indicated in Sharon Long, supra at 307, in order to become a party to a case, one must actively participate in the decisionmaking process which leads to the appeal. See California Association of Four Wheel Drive Clubs, 30 IBLA 383 (1977), where we stated:

The purpose of the requirement that an individual be a "party to a case" before a notice of appeal to this Board will lie is not to limit the rights of those who disagree with Bureau actions, but to afford a framework by which decisionmaking at the departmental and State Office level may be intelligently made.

If an individual has been a "party to a case" and seeks review of the Bureau's actions, it is presumed that the Bureau had the benefit of that individual's input when the original decision was made; thus the BLM was fully aware of the adverse consequences that might be visited upon such an individual as a result of its actions. [Emphasis in original.]

Id. at 385.

There is no indication in the record that Marston participated in the decisionmaking process prior to the BLM action taken on August 5, 1986, to permanently close the bridge to public access, although the record indicates that he was aware of the proposal to close the bridge, having written several articles for publication concerning the matter. He explains in his statement of reasons that "[t]he [bridge closure] question has been covered at length in the Grand Junction Daily Sentinel, numerous public and quasi-public meetings have been held, Congressman Michael Strang's office has spent hours, perhaps days, on the issue, and the Sierra Club initially filed an appeal it later withdrew."

Marston did not actively participate in BLM's decisionmaking prior to final action. Therefore he is not a "party to a case." Not being a party, he has no right to appeal, and his appeal must be dismissed. Even were we to consider his August 12, 1986, filing to be a protest, it would not be timely, since it was filed after BLM's action, and a protest must be filed before the action is taken. Willamette Logging Communications, Inc.,

86 IBLA 77 (1985). A protest may not be used to challenge a completed BLM action. Id. at 80. 1/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed.

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Franklin D. Arness  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Will A. Irwin  
Administrative Judge

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1/ Appellant makes several legitimate arguments concerning the issues raised by the Bridgeport Bridge controversy. Although his resolution of those issues differs from BLM's, the record indicates that many of his points were made by those who offered BLM comments and that BLM considered all viewpoints carefully in arriving at its decision.